

**BACKGROUND CHECK POLICY AND DEC PROTOCOL Q&A****1. How do I provide the results of the fingerprint check to the Court?**

File the hard copy of the criminal history separate from the court report with a cover sheet that says CONFIDENTIAL. (re: IC31-34-18-6.1)

DCS legal council suggested this wording for the cover sheet:

Under federal law and regulations the attached criminal history record obtained from the FBI can only be provided to the staff of the placing agency or the court therefore this information is being provided separate from the other court reports.

Criminal History information should also be filed with the court with the adoption summary for a finalization hearing.

**2. Should placement be denied if an individual has an “indicated” history?**

\*This is a local operations decision based on best practice and critical decision making that determines the child’s best interest.

**Please refer to the policy: Evaluating Background Checks for Unlicensed Out-of-Home Placements**

1. DCS will carefully evaluate the results of every background check conducted for unlicensed, out-of-home placements.
2. Subject to exceptions made only by the court, DCS will not place children in an unlicensed home if any individuals living in that home have been convicted of any of the following felonies:
  - a. Murder
  - b. Causing or assisting suicide
  - c. Voluntary manslaughter
  - d. Reckless homicide
  - e. Battery or aggravated battery
  - f. Kidnapping
  - g. Criminal confinement
  - h. A felony sex offense under [IC-35-42-4](#)
  - i. Carjacking
  - j. Arson
  - k. Incest
  - l. Neglect of a dependent
  - m. Child selling
  - n. A felony involving a weapon under [IC 35-47](#) or [IC 35-47.5](#)
  - o. A felony relating to controlled substances under [IC 35-48-4](#)
  - p. An offense relating to material or a performance that is harmful to minors or obscene under [IC 35-49-3](#)
3. Subject to exceptions made only by the court, DCS **will not** place children in an unlicensed home if any individuals living in that home have a substantiated record of child abuse/neglect.
4. DCS **may deny** placement in an unlicensed home if the individuals living in the home have other criminal or juvenile history not listed in Item 2 above.
5. DCS **may deny** placement in an unlicensed home if DCS determines the home to be unsuitable for the child for any reason.

**3. What are the responsibilities of private contractors as far as obtaining the criminal background checks for placement? Who is responsible for advising private contractors of the new requirements?****Please refer to Conducting Background Checks for Unlicensed Out-of-Home Placements**

1. Prior to placing a child in an unlicensed home, the **Indiana Department of Child Services (DCS)** **will conduct background checks** on all persons living in that household.

**4. Is there/will there be a county to county protocol for obtaining hard copy CPS records?**

No, counties should cooperate in sending electronic 311’s as requested. If there are problems, the issue should be resolved by management.

**How can we ensure that other counties respond to our requests for hard copy CPS records searches?**

This issue should be referred up the chain of command until it is resolved.
<p><b>5. Can day care criminal history checks be stored in the same locked cabinet as those for child welfare cases?</b></p> <p>Yes, as long as they are kept separate and all DCS records are logged as required. Please refer to the following website for a copy of tracking log.  <a href="http://www.in.gov/dcs/docs/policies/Tracking_Natl_Juv_Criminal_Reports.doc">http://www.in.gov/dcs/docs/policies/Tracking_Natl_Juv_Criminal_Reports.doc</a></p>
<p><b>6. For foster care licensing, do annual criminal history checks still need to be done?</b>  <b>Please refer to policy 610.4 Annual Reevaluation/Renewal Evaluation</b></p> <p>“Each licensed foster family home is to be visited annually by the FCM or licensing staff to update information and to determine if the family continues to meet the requirements for licensure.”</p> <p>The <b>renewal Evaluation</b> of foster homes shall <b>include</b> the following:          3) A completed consent to release information for Foster Family Home license to obtain a CPS check and SF 8053, Request for Limited Criminal History Information</p>
<p><b>7. If the court makes placement with a non-custodial parent or relative prior to criminal history checks being done, does DCS then have an obligation to follow up with the criminal history checks?</b></p> <p>Yes. Follow procedure and practice as it pertains to: Out-of-Home Care Section: Conducting Background Checks for Unlicensed Out-of-Home Placements</p>
<p><b>8. Does DCS have a responsibility to monitor and notify residents if they are aware that children are residing on property that was formerly used as a meth lab?</b></p> <p>No</p>
<p><b>9. If children have been in an unlicensed but court-approved relative placement since 1194 (7-1-04) but prior to 529 (7-1-05), do fingerprints still need to be done?</b></p> <p>No. The policy "Conducting Background Checks for Unlicensed Out-of-Home Placements became effective <b>July 1, 2005.</b>"</p>
<p><b>10. The primary caregiver and additional household member forms request information on individuals' residences for the last 10 years. Are we to limit our search to information from the last 10 years?</b></p> <p>Yes, unless you have knowledge of history older than 10 years. This will help to ensure the safety of the child(ren).</p>
<p><b>11. Could a form letter be developed to request criminal, juvenile and CPS history that could be printed directly from ICWIS to serve as documentation?</b></p> <p>We will take this under consideration.</p>
<p><b>12. If another state or agency provides oral verification of CPS, juvenile or criminal records, is that adequate if documented in the contact log, or does it need to be in written form?</b></p> <p>Take down the verbal documentation; who gave the information, the agency name, name and title of the person, date and time information received, etc. Then request written follow-up documentation.</p>
<p><b>13. Do foster parents have to pay the cost of criminal background checks when adopting a foster child? Could the expense be reimbursed by the county (and from what fund) or would it qualify for reimbursement as non-recurring adoption expense?</b></p> <p>The cost of criminal background checks could be reimbursed by NRAE if parents are adopting a special needs child. Section 473(c) item 1 of the social security act (changes incorporated through 3/27/2000) states: “The term “nonrecurring adoption expenses” means reasonable and necessary adoption fees, court costs, attorney fees and other expenses which are directly related to the legal adoption of a child with special needs, which are not incurred in violation of State or Federal law and which have not been reimbursed from other sources or other funds.”</p>
<p><b>15. Have physicians been advised of the “near fatality” classification?</b></p> <p>DCS has developed a near fatality definition and policy that will be released with the investigation policies in November. Physicians will not declare near fatality, they will provide medical documentation and FCMs will define based on DCS criteria.</p>
<p><b>16. What is the complete definition of “near fatality?”</b></p> <p>This question will be answered in new investigation policy training in November/December 2005.</p>
<p><b>17. Will ICWIS be modified to include the term “near fatality” to assist DCS in tracking these cases?</b></p> <p>Yes</p>

<p><b>18. When will local offices get laminated copies of DEC protocols and blankets to use when children are removed from meth homes?</b> These should be available soon.</p>
<p><b>19. Could a tracking form be created or even maintained in ICWIS to show what background checks have been completed and then as a quick reference?</b> Yes. We are looking into an electronic database.</p>
<p><b>20. A child qualifies as DEC if caregivers are manufacturing meth in or around the home. Does the description include mobile meth labs?</b> Yes <b>IC 5-2-15-2 "Methamphetamine laboratory"</b> Sec. 2. As used in this chapter, "methamphetamine laboratory" means a location or facility that: (1) is being used; (2) was intended to be used; or (3) has been used; to produce methamphetamine.</p>
<p><b>21. If the local LEA checks reveal the same information as the FBI fingerprint check, can the information from the local check be released?</b> Local checks can be released. Out-of-Home Care <b>Section:</b> Conducting Background Checks for Unlicensed Out-of-Home Placements 2. DCS will maintain confidentiality of all information gained during the background check process, following all applicable state and federal laws. a. Reports and data obtained from <b>National Criminal History</b> and <b>Indiana State Juvenile History</b> databases will only be accessed by DCS employees, law enforcement and officials of the court. b. All other reports and data may be accessed by DCS employees, law enforcement and officials of the court <u>and</u> shared with the subject of the criminal/civil history report <u>if</u> that individual requests a copy of the report.</p>
<p><b>22. Is DCS prohibited by HIPAA regulations from disclosing medical information regarding birth parents to perspective adoptive parents? (re: SEA 340, disclosing non-identifying information about birth parents.)</b> State Matter of Law provisions generally trump HIPAA rules and regulations. In this case, the Indiana Code requirements state what must happen; and the HIPAA protections and Indiana code come into play in protecting the identity of the birth parents. As long as the identity of the birth parents is protected, health information can be shared, as long as it does not tend to identify the parent. For example, knowledge that the birth mother has hepatitis is not individually identifiable health information until enough information is disclosed for a recipient to know the identity of the birth mother, such as her name, pictures of the mother, etcetera. Side note: the report preparer, regardless of the agency they are working for, probably has enough links as an agent/business associate of a covered entity or other mandates to protect the information to the same extent, as if they were a covered entity.  But the general answer is, HIPAA would not supercede the Indiana Code; but to the extent possible, after compliance with this particular Indiana code cite, HIPAA protections should be utilized to preclude any further sharing of health information.</p>
<p><b>23. How do local offices get access to the limited criminal history site if they do not already have access?</b> The Local Office Operations Division is working on a contract with Access Indiana so that each county will have access.</p>
<p><b>24. Will there be a standardized form to provide criminal history information to the court?</b> Not at this time.</p>
<p><b>25. Is the court also obligated to store the information from the FBI criminal history checks in a locked file cabinet apart from their court cases?</b> The court would be expected to abide by federal rules.</p>

**26. Could an "emergency placement" situation result from a disrupted placement? (Example a foster parent demands the removal of a child).**

No

**27. Do "constructive removals" require criminal history background checks?**

(Constructive removals are used in situations where the child is not physically removed and placed in foster care. For example, the child may be staying with a relative. CPS would leave the child with the relative, although we are "removing" them from the parent and filing a CHINS. A similar situation might be a case in which the children are "in home" CHINS, but "removed" by the court's order pursuant to the dispositional decree.)

Yes. Criminal background checks would be run, but the FCM should not remove the child(ren) unless the placement resource has a criminal history that would preclude placement. Refer to Out-of-Home Care

**Section:** Conducting Background Checks for Unlicensed Out-of-Home Placements

**28. We are working to finalize an MOU with our local Sheriff's Dept. to do the fingerprints. Problem--our jail has a new "live scan" system. They don't have any cards any longer. I did take our supply of cards to them. They almost threw them away. The Dept. Jail Commander informed me that their live scans go directly to the state. Is this a system we can utilize, or do we need to ask them to please use the cards provided?**

The Live scan will print up the card with their ORI number on it, they will have to white out their ORI number and put the DCS ORI on the card or they can use the DCS card in their printer and print out the fingerprint card. There is a certain function that will do that for them. They cannot transmit the card to ISP electronically; the cards will have to be mailed to ISP Headquarters, attention Ken O'Hare.

**29. Does FBI fingerprint check reflect only convictions or does it also reflect arrests? If it also reflects arrests, how do we find out if there were convictions?**

It will show arrests and convictions.

**30. What is DCS policy regarding placement in a home where there is an arrest record but no conviction?**

Please Refer to the Policy: Out-of-Home Care Section: Evaluating Background Checks for Unlicensed Out-of-Home Placements

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**31. Will local DCS offices get feedback when passwords/challenge questions are accepted/approved?**

All passwords are accepted/approved, and we do not provide feedback that your information has been received. Feedback will be provided if you do not give all required information.

**32. Can CCI be accessed on ICWIS migration weekends when the system is unavailable?**

It's usually available by Saturday morning, although it is not "officially" available until Saturday at 5 p.m. We are trying to find a way to shorten the time "unavailable" even further. The Web CCI is available 24/7. When the Central server is down, you can still search the Web CCI.

**33. Aren't attorneys considered "officials of the court"; and as such, shouldn't they also have access to FBI criminal checks?**

**Please reference the policy** Conducting Background Checks for Unlicensed Out-of-Home Placements  
NATIONAL CRIMINAL HISTORY AND INDIANA STATE JUVENILE HISTORY REPORTS

1. These reports will only be accessed by officials of the court, law enforcement, and DCS employees. "Officials of the court" **does not include** attorneys, CASAs or Guardians ad Litem (GALs). If DCS receives a subpoena for a national criminal history or juvenile history report, DCS will forward a copy to the court, not directly to the individual or entity that submitted the subpoena.

**34. Can the FBI fingerprint check be shared with a CPS agency in another state, or is that information restricted to Indiana CPS agencies?**

**Please reference the policy** Conducting Background Checks for Unlicensed Out-of-Home Placements  
NATIONAL CRIMINAL HISTORY AND INDIANA STATE JUVENILE HISTORY REPORTS

2. These reports will only be accessed by officials of the court, law enforcement, **and DCS employees**. "Officials of the court" does not include attorneys, CASAs or Guardians ad Litem (GALs). If DCS receives a subpoena for a national criminal history or juvenile history report, DCS will forward a copy to the court, not directly to the individual or entity that submitted the subpoena.

This is restricted to Indiana DCS agencies.

**35. When will FCMs get specific information regarding decontaminating themselves, their clothing and vehicles after contact with meth labs and children removed from meth labs?**

Per the INDIANA DRUG ENDANGERED CHILDREN (DEC) RESPONSE PROTOCOL

1. If possible given specific circumstances, photograph and decontaminate the children (remove chemical residue) at the scene by taking the children to a safe location that affords privacy and doing the following: Wear latex gloves; photograph children in original clothing to document cleanliness; remove clothing down to undergarments; photograph any visible injuries; use wet-wipes to cleanse body, including face; dress in disposable Tyvex® suit or clean clothing provided by a responder; follow LEA procedure for disposal of contaminated gloves, wipes and clothing.
2. If not possible to decontaminate at the scene, protect responders and response vehicles from chemical residue on child prior to transport by doing the following: Wear latex gloves; leave child in existing clothing; use wet-wipe to cleanse hands and face; wrap child in a disposable emergency blanket or a thick blanket; or put oversized coat/sweat suit over child's clothing; follow LEA procedure for disposal of contaminated gloves and wipes.

**36. Could each FCM investigator be provided with a kit that would supply everything necessary for decontamination and protection after contact with a meth lab?**

DCS has been awarded a grant from the Indiana Criminal Justice Institute to provide training and materials to DCS regarding Meth Labs. This request will be forwarded for consideration.

**37. To what extent do we need to document the relative relationship when we are considering placement with an unlicensed relative? Do we need to verify birth relationship to parents? Can step (non-biological) relatives be considered for placement? What about the father and his family when paternity has never been established?**

This question will be answered in the investigation policies. Training on investigations policies will be provided in Nov/Dec 2005.

**38. If a child is on weekend visitation with the non-custodial parent when an abuse incident occurs, can the child be returned to the custodial parent without criminal history checks?**

Yes.

**Are foster parents being informed of the DEC protocols, decontamination procedures, etc?**

Yes, DEC policies will be covered at Indiana Foster Care and Adoption Association (IFCAA) conference November 10, 11 and 12, 2005. Information will also be available on the IFCAA Website and newsletter. Local offices should be addressing this issue in foster parent support meetings.

**39. What is the definition of detention?**

A child is detained when a child is taken into custody.

**40. How does the new criminal background check policy impact a family's capacity to come up with their own safety plan to protect their children in the following situations (investigation may be substantiated, but generally does not require DCS removal):**

**Dirty house. Children go stay with grandma while parents remain at home to clean up house.**

**Lack of adequate utilities. Children stay with relative while parents arrange to have utilities connected.**

A FCM should only do a criminal background check when they have taken a child into custody and DCS is recommending placement of a child in an unlicensed home.

**Please reference the policy:** Conducting Background Checks for Unlicensed Out-of-Home Placements  
Prior to placing a child in an unlicensed home, the Indiana Department of Child Services (DCS) will conduct background checks on all persons living in that household.

**41. Describe what type of intervention is required in the following circumstances:**

**One or both parents are casual meth users and have positive drug screens, but they appear to maintain minimum sufficient level of care for their children.**

Drug Endangered Children are children under age 18 found to be living in homes: (a) with caregivers who are manufacturing methamphetamine in/around the home ("meth labs") or (b) where caregivers are dealing/using methamphetamine and the children have access to the drug or drug residue ("meth homes"). Both scenarios fall within Indiana's statutory definition of child abuse/neglect. Children will be removed, given necessary health care and placed with alternate caregivers.

**A newborn meconium test showing positive for meth is received 10 days after the infant has been released from the hospital.**

IC 31-34-1-10

Child born with fetal alcohol syndrome or with controlled substance or legend drug in child's body

Sec. 10. Except as provided in sections 12 and 13 of this chapter, a child is a child in need of services if:

(1) the child is born with:

(A) fetal alcohol syndrome; or

(B) any amount, including a trace amount, of a controlled substance or a legend drug in the child's body; and

(2) the child needs care, treatment, or rehabilitation that:

(A) the child is not receiving; or

(B) is unlikely to be provided or accepted without the coercive intervention of the court.

Under both of these scenarios, the FCM should conduct a complete investigation and assure the safety of the child. These cases should be staffed with a supervisor.